

**§ 301.7609-4 Right to intervene; right to institute a proceeding to quash.**

(a) *Intervention in proceeding with respect to enforcement of a summons.* Under section 7609(b)(1), a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 is entitled to intervene in any proceeding brought under section 7604 with respect to the enforcement of that summons.

(b) *Right to institute a proceeding to quash—(1) In general.* Under section 7609(b), a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 may institute a proceeding to quash the summons in the United States district court for the district in which the summoned person resides or is found.

(2) *Requirements for a proceeding to quash.* To institute a proceeding to quash a summons, a person entitled to notice of the summons must, not later than the 20th day following the day the notice of the summons was served on or mailed to such person—

(i) File a petition to quash a summons in the name of the person entitled to notice of the summons in the proper district court;

(ii) Notify the Internal Revenue Service (IRS) by sending a copy of that petition to quash by registered or certified mail to the IRS employee and office designated in the notice of summons to receive the copy; and

(iii) Notify the summoned person by sending by registered or certified mail a copy of the petition to quash to the summoned person.

(3) *Failure to give timely notice.* If a person entitled to notice of the summons fails to give proper and timely notice to either the summoned person or the IRS in the manner described in this paragraph, that person has failed to institute a proceeding to quash and the district court lacks jurisdiction to hear the proceeding. For example, if the person entitled to notice mails a copy of the petition to the summoned person, but fails to mail a copy of the petition to the designated IRS employee and office, the person entitled to notice has failed to institute a proceeding to quash. Similarly, if the person entitled to notice mails a copy of such petition to the summoned person but, instead of sending a copy of the

petition by registered or certified mail to the designated IRS employee and office, the person entitled to notice provides the designated IRS employee and office the petition by some other means, the person entitled to notice has failed to institute a proceeding to quash.

(4) *Failure to institute a proceeding to quash.* If a person entitled to notice fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such person, the IRS may examine the summoned records and take summoned testimony following the 23rd day after notice of the summons was served on or mailed to the person entitled to notice.

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a person entitled to notice to institute a proceeding to quash by filing a petition in district court and notifying both the IRS and the summoned person. Unless the person entitled to notice has notified both the IRS and the summoned person in the appropriate manner, the person entitled to notice has failed to institute a proceeding to quash. For the purpose of permitting the IRS to examine the summoned witnesses and records, it is presumed that the notification was not timely mailed if the copy of the petition was not delivered to the summoned person or to the person and office designated to receive the notice on behalf of the IRS within three days after the close of the 20-day period allowed for instituting a proceeding to quash.

(d) *Effective/applicability date.* This section is applicable on April 30, 2008.

[T.D. 9395, 73 FR 23345, Apr. 30, 2008]

**§ 301.7609-5 Suspension of periods of limitations.**

(a) *In general.* Except in the case of a summons that is a designated or related summons described in section 6503(j), the following rules relating to the suspension of certain periods of limitations apply to all third-party summonses subject to the notice requirements of section 7609(a) and to all John Doe summonses subject to the requirements of section 7609(f).

(b) *Intervention in an action to enforce the summons—(1) In general.* If a person